IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-9-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.43835 of 2006
and
MP Nos.1 of 2006 and 1 of 2007

M/s.Sri Murugan Automobiles
represented by its Proprietor
M.Ellappan
No.25/9 Vinobhaji Street
Radhakrishnan Nagar
Choolaimedu, Chennai 600 094. .. Petitioner

vs

Indian Bank
Rep. By its Chief Manager
Authorised Officer
Kodambakkam Branch
347, Arcot Road
Chennai 600 024. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the respondent Bank in reference to notice of Intending Sale dated 20.7.2006 and quash the entire proceedings taken pursuant to the said notice dated 20.7.2006 and consequently direct the respondent to accept the outstanding amount of Rs.2,20,000/- agreed by them under one time settlement scheme by returning the title deeds deposited by the petitioner.

For Petitioner : Mr.M.Manivannan

For Respondent : Mr.R.Venkataraman

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ORDER

Seeking a writ of certiorarified mandamus, the petitioner has brought forth this writ petition to quash the respondent bank's notice of Intending Sale dated 20.7.2006, and quash the entire proceedings pursuant to the said notice and further direct the respondent Bank to accept the outstanding amount of Rs.2,20,000/- agreed by them under One Time Settlement Scheme.

2.The affidavit in support of the petition is perused. The Court heard the learned Counsel on either side.

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3.Admittedly, the petitioner approached the respondent Bank for doing his business and submitted an application for loan in 1994 under THADCO Scheme. Under the said Scheme, sanction was made for Rs.2.00 lakhs on 21.1.1995. Subsequently, subsidy was granted. Following the same, monthly instalment was to be paid. But, there was default. In such circumstances, a suit came to be filed by the Bank in O.S.No.4210/98 on the file of the XVIII Assistant City Civil Court, Madras. A preliminary decree came to be passed, and final decree was also applied for. Following the same, a notice was issued by the Bank under Sec.13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Following the same, the property was brought for sale. Under the circumstances, this writ petition has been brought forth.

4.It is also further contended by the learned Counsel for the petitioner that a suit in O.S.No.4354 of 2006 was filed by the petitioner before the VI Assistant City Civil Court, Madras; that it is a case for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the property, and under the circumstances, it is a fit case where the Court has to interfere and pass orders for the reasons stated therein and for the irregularities committed by the Bank.

5.The learned Counsel for the respondent would submit that in the instant case, pursuant to the preliminary decree passed, a notice was issued under Sec.13(2) of the Act; that following the same, the property was brought for sale; that as per the said notice, the property was actually sold; that it has been purchased by the third party; that the sale proceeds have been given credit to towards the liability of the petitioner; that under the circumstances, if the petitioner is really aggrieved, he has got an appeal remedy under the provisions of the Act; that he can make an appeal before the D.R.T.; that instead, he has brought forth this petition before this Court, and hence, it has got to be dismissed.

6.After careful consideration of the submissions made, this Court is of the considered opinion that once it is brought to the notice of the Court that there is an alternative efficacious remedy available, no question of knocking the doors of the writ Court would arise. Admittedly, a notice was issued by the respondent following the preliminary decree passed by the City Civil Court, under Sec.13(2) of the Act. The property was also brought for sale. That notice is being challenged in this writ petition. According to the learned Counsel for the respondent, the property, pursuant to the sale notice, was sold in public auction, and it was purchased by the third party, and the sale proceeds have been given credit to. Now, at this juncture, it remains to be stated that the petitioner has challenged the sale notice. It is brought to the notice of the Court that the property has already been sold. Apart from all the above, an

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appeal provision is available under the said Act, and it has got to be preferred before the D.R.T. Once an appeal remedy is available, an efficacious one, there is no question of entertaining this writ petition by this Court. Hence, it has got to be dismissed.

7.While dismissing the writ petition, the learned Counsel for the petitioner brought to the notice of the Court that the time available for preferring an appeal is only 60 days, and under the circumstances, liberty has got to be given to the petitioner to prefer an appeal. This Court feels that if liberty is granted, it would be nothing but extending the period of limitation, and it should not be done. Further, in the instant case, as and when the appeal is preferred before the D.R.T., the pendency of the writ proceedings before this Court has got to be taken into consideration by that forum while considering the question as to the condonation of delay in preferring the appeal. With that observation, this writ petition is disposed of. No costs. Consequently, connected MPs are closed.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Chief Manager
Indian Bank
Authorised Officer
Kodambakkam Branch
347, Arcot Road
Chennai 600 024.

2. The Registrar,
City Civil Court, Chennai.

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+ 1 cc to Mr. M. Manivannan, Advocate SR No.58037

+ 1 cc to Mr. R. Venkataraman, Advocate SR No. 58019

VC(CO)
SR/20.9.2007 WP No.43835 of 2006

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